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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN JOSEPH MAZZITELLI

Appeal 2009-009238
Application 10/057,135
Technology Center 2400

Before LANCE LEONARD BARRY, HOWARD B. BLANKENSHIP, and
JEAN R. HOMERE, *Administrative Patent Judges*.

BLANKENSHIP, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-6, 8-16, 18-26, and 28-30, which are all the claims remaining in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Invention

Appellant's invention relates to a multi-threaded server accept system.

Representative Claim

1. A multi-threaded server accept method, comprising:

creating a socket accept thread by a control thread of a server process;

receiving a service request from a client by the socket accept thread;

transferring the request to a data structure;

retrieving the request, by the control thread, from the data structure; and

transferring the request to a client thread dynamically created by the control thread to process request data associated with the request.

Examiner's Rejections

Although the Examiner leaves it as an exercise for the reader to determine which ground(s) of rejection should apply to claims 12-16, 18-26,

and 28-30, Appellant concludes (App. Br. 4) that the claims are rejected as follows:

Claims 1, 2, 4-6, 8-13, 15, 16, 18-23, 25, 26, and 28-30 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Guedalia (US 2003/0088609 A1); and

Claims 3, 14, and 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Guedalia and Srikantan (US 2001/0029548 A1).

FINDINGS OF FACT

We rely on the findings set forth by the Examiner in the Answer.

PRINCIPLES OF LAW

During examination, claims are to be given their broadest reasonable interpretation consistent with the specification, and the language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (citations omitted). The Office must apply the broadest reasonable meaning to the claim language, taking into account any definitions presented in the specification. *Id.* (citing *In re Bass*, 314 F.3d 575, 577 (Fed. Cir. 2002)).

ANALYSIS

Although the Argument section of Appellant's Appeal Brief contains multiple headings, we will decide the appeal on the basis of claim 1 alone because the claim contains the feature that Appellant submits is absent from the applied prior art. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Guedalia is applied in a § 102 rejection against claim 1. The claim recites “transferring the request to the client thread *dynamically created* by the control thread *to process request data* associated with the request” (emphasis added). Appellant argues that Guedalia discloses a multi-thread management system that uses a “watchdog” timer and tick counter. According to Appellant, however, the reference discloses processing request data from already existing threads in a thread pool, not having threads “dynamically created” by the control thread to process request data associated with the request. Guedalia indicates, in Appellant’s view, “waiting” before any new threads are created in order to prevent a “proliferation” of threads which could affect system performance.

The Examiner, in response, points to paragraphs [0108] and [0245] of Guedalia, which expressly describe creating new threads. Ans. 7-8.

Guedalia at paragraph [0108] states that the invention provides a dynamic functionality for thread management, whereby additional threads are created and destroyed during processing.

When a request queues up, the system of the present invention does not immediately create a new thread. Rather, the watchdog manages the threads. Whenever the watchdog discovers, during its regular check, that the tick counter of a thread has reached 3, it then lowers the priority of this thread and removes it from the thread pool, *and creates a new thread* to replace it. The old thread that was removed from the thread pool completes its task and dies. *The new thread, immediately upon its creation, is free to process a request in the queue if a queued request exists.* Otherwise the thread waits for a request. Thus the total number of threads in the thread pool remains a constant.

Guedalia ¶ [0245] (emphasis added).

We agree with the Examiner that claim 1, as broadly drafted, does not require that a client thread be “dynamically created” by the control thread to process request data associated with the request *immediately and in every instance* that a service request is made. We thus agree with the Examiner that claim 1 fails to distinguish over the multi-threading method described by Guedalia.

Appellant’s Reply Brief, apparently prepared by a different counsel, contains new arguments that could have been presented earlier. In particular, Appellant could have presented the new arguments in the Appeal Brief, such that we would have had benefit of the Examiner’s evaluation of the arguments in the responsive Answer. Appellant does not explain what good cause there might be to consider the belated arguments. Appellant’s new arguments are thus untimely and have, accordingly, not been considered. *See Ex parte Borden*, 93 USPQ2d 1473 (BPAI 2010) (informative).

For the foregoing reasons, we sustain the Examiner’s rejections under 35 U.S.C. §§ 102 and 103(a).

DECISION

The rejection of claims 1, 2, 4-6, 8-13, 15, 16, 18-23, 25, 26, and 28-30 under 35 U.S.C. § 102(e) as being anticipated by Guedalia is affirmed.

The rejection of claims 3, 14, and 24 under 35 U.S.C. § 103(a) as being unpatentable over Guedalia and Srikantan is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 41.50(f).

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Application 10/057,135

AFFIRMED

msc

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